



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

JUL 18 2006

Nancy Steele

Dahinda, IL 61428

RE: MUR 5765

Dear Ms. Steele:

On June 20, 2006, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

  
Michael E. Toner  
Chairman

Enclosures  
Factual and Legal Analysis  
Procedures  
Designation of Counsel Form

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1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**  
3

4 RESPONDENT: Nancy Steele

MUR 5765

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7 **I. INTRODUCTION**

8 This matter was generated by the Federal Election Commission (“Commission”) pursuant  
9 to information ascertained in the normal course of carrying out its supervisory responsibilities.

10 The available information indicates that Crop Production Services, Inc. (“CPS”), an agricultural  
11 products company based in Galesburg, Illinois, used corporate funds to reimburse the  
12 contributions of six individuals totaling \$43,305.<sup>1</sup> These six individuals included Nancy Steele,  
13 her spouse, CPS manager Alan Steele, two other CPS managers, and a CPS vice president and  
14 his spouse. The activity occurred during the period 2001-2003. All the reimbursed contributions  
15 were made to the Agricultural Retailers Association Political Action Committee (“ARA-PAC”).<sup>2</sup>

16 As more fully set forth below, it appears that Nancy Steele knowingly permitted her name  
17 to be used to effect contributions in the name of another, in violation of 2 U.S.C. § 441f, a  
18 provision of the Federal Election Campaign Act of 1971, as amended (“the Act”).

19 **II. FACTUAL AND LEGAL ANALYSIS**

20 **A. Summary of Information**

21 **1. Contributions and Reimbursements**

22 The reimbursed contributions are set forth in the following table.  
23  
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<sup>1</sup> CPS is a retailing subsidiary of Agrium US, Inc., whose parent company is Agrium, Inc., a Canadian corporation.

<sup>2</sup> ARA-PAC is a separate segregated fund of the Agricultural Retailers Association

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<u>Contributor Name</u>	<u>Amount</u>	<u>Contribution Date</u>	<u>Occupation</u>
Alan Steele	\$7,800	12/07/01	CPS manager
Thomas Warner	\$5,550	01/10/03	CPS vice president
Debra Warner	\$5,550	01/10/03	spouse
Thomas Warner	\$7,805	12/23/03	CPS vice president
Alan Steele	\$5,000	12/23/03	CPS manager
Nancy Steele	\$4,600	12/23/03	spouse
Denny Horstman	\$2,900	12/23/03	CPS manager
Duane Mol	\$4,100	12/23/03	CPS manager

1  
2 The available information indicates that CPS reimbursed the six individuals for items  
3 they purchased at auctions sponsored by ARA-PAC at the Agricultural Retailers Association  
4 Annual Conference and Exposition in December 2001, December 2002<sup>3</sup> and December 2003. At  
5 each auction, ARA-PAC offered up for bidding an array of agricultural supplies and equipment,  
6 among other things. CPS employees bid on and won certain items at the auctions, with the  
7 expectation that the items would be used by CPS in its business. The available information  
8 indicates that the employees then sought and received payments from CPS in order to pay for the  
9 amounts of their winning bids. Shortly after receiving these payments from CPS, the employees  
10 contributed the funds to ARA-PAC. These contributions and the CPS payments that reimbursed  
11 the contributions are set forth in detail below.

12 The available information indicates that the employee reimbursements were all approved  
13 by Thomas Warner, then a CPS vice president and currently president of CPS. The  
14 reimbursements were accomplished through the use of CPS Orders for Payment, which list the  
15 employee's name in the "To" field, the equipment or materials purchased in the ARA-PAC  
16 auction in the "Payment Is For" field, and contain what appears to be Warner's signature in the

<sup>3</sup> The reimbursed contributions related to the December 2002 auction were disclosed by ARA-PAC as received in January 2003.

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1 "Approved By" field. No other signatures appear on the forms. The Orders for Payment also  
2 state "Reimbursement" in the "No." field for the December 2001 and January 2003 contribution  
3 reimbursements, and state "ARAPAC Auction" in this field for the December 2003 contribution  
4 reimbursements.

5 CPS reimbursed the contributors using corporate checks. In the case of the  
6 reimbursements of Debra Warner's and Thomas Warner's contributions, however, CPS did not  
7 directly reimburse them. Instead, CPS reimbursed the Warners through Alan Steele.  
8 Specifically, CPS issued an \$11,100 check to Steele dated December 10, 2002, which he signed  
9 over to Thomas Warner to reimburse Thomas and Debra Warner's \$5,550 contributions to ARA-  
10 PAC in January 2003. In addition, CPS issued a \$16,850 check to Steele dated December 9,  
11 2003 to reimburse Thomas Warner's December 2003 contribution, as well as Alan and Nancy  
12 Steele's December 2003 contributions. Alan Steele subsequently paid Warner \$7,250 of the  
13 \$16,850 to reimburse him.<sup>4</sup>

14 Within a few days after the employees were provided the reimbursements by CPS, they  
15 made their contributions to ARA-PAC by personal check and transferred their auction items to  
16 CPS for use in its business.

## 17 2. Refunds and Repayments

18 The available information indicates that the subject reimbursements came to light at CPS  
19 on September 1, 2005. Less than two weeks later, on September 14, 2005, CPS Chief Executive  
20 Officer, Richard Gearheard, sent written directives to each of the four reimbursed CPS

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<sup>4</sup> The difference between this \$7,250 reimbursement to Thomas Warner and the amount of his \$7,805 contribution dated December 23, 2003, is \$555 that CPS reimbursed directly by check to Debra Warner relating to her \$555 bid at the ARA-PAC auction for a floral arrangement and retirement gift cufflinks.

1 employees, listing the reimbursed contributions, explaining that the reimbursements are unlawful  
2 and must be paid back in full to CPS as soon as possible, asking the employees to report to  
3 Gearheard any additional reimbursed contributions, and stating that the company is in the process  
4 of drafting correspondence for the employees' use in apprising ARA-PAC of the illegal nature of  
5 the contributions and the PAC's legal obligation to refund the contributions.<sup>5</sup>

6 Two days later, on September 16, 2005, CPS provided letters to the four reimbursed  
7 employees to use to notify ARA-PAC of the likely illegal nature of their contributions; the letters  
8 advise ARA-PAC of its obligation under federal law to disgorge and return these illegal  
9 contributions within 30 days, citing 11 C.F.R. § 103.3(b)(2). On September 19, 2005, the four  
10 reimbursed CPS employees sent such letters to ARA-PAC.<sup>6</sup>

11 On September 21, 2005, ARA-PAC issued refunds to the four reimbursed CPS  
12 employees and the two spouses. The PAC refunded only a portion of the contributions,  
13 however;<sup>7</sup> the remaining portion of the contributions were refunded a few days later, on  
14 September 30, 2005, from a separate ARA account used for administrative expenses.<sup>8</sup> Together,

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<sup>5</sup> The contributions identified in Gearheard's letters correspond to the reimbursement checks issued by CPS. Thus, his letter to Alan Steele attributes to Mr. Steele the contributions made by Mr. Steele as well as those made by Thomas Warner. Similarly, Gearheard's letter to Thomas Warner lists only the \$555 reimbursement to Debra Warner. See *supra* footnote 4.

<sup>6</sup> Alan Steele's letter to ARA-PAC, which is dated September 18, 2005 and cc's CEO Gearheard, identifies his December 2001 contribution and his and Nancy Steele's December 2003 contributions; the letter does not mention the contributions by Thomas Warner for which Mr. Steele was reimbursed by CPS.

<sup>7</sup> ARA-PAC disclosed the partial refunds on its October 2005 monthly report.

<sup>8</sup> The cover letters from both ARA-PAC and the ARA explain that portions of the contributions at issue had been disbursed by the PAC into the ARA administrative account, and thus the refunds came from both places. Specifically, ARA-PAC refunded to the contributors the amounts of the contributions that had remained in the ARA-PAC account, and the ARA administrative account refunded those portions that had been disbursed by the PAC into the administrative account.

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1 these refunds match the total amounts of the reimbursed contributions by the four CPS  
2 employees and the two spouses, as summarized in the table below.

<u>Contributors</u>	<u>Total Contributions</u>	<u>Refunds from ARA-PAC</u>	<u>Refunds from ARA Admin Account</u>	<u>Total Refunds</u>
Al and Nancy Steele	\$17,400.00	\$4,766.67	\$12,633.33	\$17,400.00
Thomas and Debra Warner	\$18,905.00	\$9,521.67	\$ 9,383.33	\$18,905.00
Denny Horstman	\$ 2,900.00	\$1,333.33	\$ 1,566.67	\$ 2,900.00
Duane Mol	\$ 4,100.00	\$ 393.33	\$ 3,706.67	\$ 4,100.00

3  
4 Finally, the reimbursed employees wrote checks to CPS to repay the reimbursements.

5 These checks range in date from September 18, 2005 to October 11, 2005.<sup>9</sup> At this point, it  
6 appears that CPS, the four employees and two spouses, and ARA-PAC have all been returned to  
7 their *status quo ante* financially.

8 **B. Liability of Nancy Steele**

9 The available information indicates that CPS used corporate funds to reimburse employee  
10 contributions to ARA-PAC. Under the Act, no person shall make a contribution in the name of  
11 another person or knowingly permit his or her name to be used to effect such a contribution.  
12 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a  
13 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).

14 Nancy Steele appears to have knowingly permitted her name to be used to effect  
15 contributions in the name of another. Thus, there is reason to believe that Nancy Steele violated  
16 2 U.S.C. § 441f.

<sup>9</sup> The checks from Alan Steele and Warner match their reimbursements from CPS, which as noted above do not match their contributions because the reimbursements to Warner were routed through Mr. Steele. Accordingly, Mr. Steele's repayment to CPS is \$35,750 and Warner's repayment is \$555, the latter check signed by Debra Warner. Thomas Warner presumably paid to Steele \$18,350, an amount equivalent to that Mr. Steele had earlier paid to Warner out of the reimbursement checks Mr. Steele received from CPS.

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1           Because section 441f violations are usually knowing and willful, the issue necessarily  
2 arises whether the apparent violations here were knowing and willful. The phrase “knowing and  
3 willful” indicates that “actions [were] taken with full knowledge of all of the facts and a  
4 recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976).  
5 A knowing and willful violation may be established “by proof that the defendant acted deliberately  
6 and with knowledge that the representation was false.” *United States v. Hopkins*, 916 F.2d 207,  
7 214 (5th Cir. 1990).

8           In other *sua sponte* matters involving reimbursed contributions, the Commission has  
9 considered factors such as whether the available information indicated that respondents were aware  
10 that their conduct was illegal, whether respondents were fully forthcoming in their submissions,  
11 and the timing of respondents’ notice to federal authorities. In MUR 5628 (AMEC), respondents  
12 asserted that the violations were not knowing and willful, despite the absence of written records,  
13 which suggested that respondents intentionally disguised their corporate political contributions.  
14 *See* MUR 5628 First General Counsel’s Report at 2-3. Respondents had also not been fully  
15 forthcoming with relevant information despite two requests. *See id.* at 3, 11. Consequently, the  
16 Commission found reason to believe that respondents knowingly and willfully violated 2 U.S.C.  
17 §§ 441b(a) and 441f.

18           By contrast, in MUR 5643 (Carter’s Inc.), the *sua sponte* submission was complete, the  
19 available information indicated that respondents were unaware that their conduct was illegal, and  
20 respondents revealed the violation of the law to federal authorities as soon as it was discovered and  
21 had taken steps to remedy the violation. *See* MUR 5643 First General Counsel’s Report at 2, 5.  
22 Under these circumstances, the Commission did not find reason to believe that respondents had

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1 knowingly and willfully violated the Act. *See also* MUR 5357 (Centex) (the Commission did not  
2 make any knowing and willful reason to believe findings); MUR 5398 (Lifecare) (the Commission  
3 made knowing and willful reason to believe findings regarding the two corporate executives who  
4 disguised the reimbursements as bonuses but did not make knowing and willful reason to believe  
5 findings regarding the corporation or several conduits).

6 In the present matter, there is no information available at this time indicating that Nancy  
7 Steele was involved in a scheme to disguise the reimbursements; rather, the payments on the CPS  
8 Orders for Payment were expressly described as "Reimbursement" and "ARAPAC Auction."<sup>10</sup>  
9 Moreover, substantial information has been provided to the Commission, and steps have been  
10 quickly taken to remedy the violations. Under these circumstances, the Commission is not at this  
11 time finding that the violation was knowing and willful.

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<sup>10</sup> ARA-PAC literature describing the auctions states:

ARAPAC may only accept contributions from ARA members. Payment in the form of a personal or a Limited Liability Company check or credit card (LLC must be taxed as a partnership) is preferred for auction items and/or contributions. Federal law stipulates that individuals may not receive reimbursement from a corporation for personal funds contributed to the ARAPAC.

Donations made by corporate check and individual contributions in excess of federal limits will be accepted to pay for the administrative expenses of the PAC and non-candidate related political activities. These funds are also helpful to the association.

This matter, however, does not involve CPS providing corporate checks directly to ARA-PAC.

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